

TRIAL EXHIBIT 1026



SUN PROPRIETARY/CONFIDENTIAL: INTERNAL USE ONLY

USA Sun Microsystems, Inc.

Document Separator Sheet

• **Agreement Type: (40A/N)**

- Confidential Disclosure
- XX Sales Outbound
- Inbound Technology
- Marketing
- Supply/Vendor

• **Name of Third Party: (50A/N)** DANGER INC.

• **Name of Sun Entity: (50A/N)**

- XX Sun Microsystems, Inc.
- Sun Federal
- BV1
- Techco

• **Agreement Effective Date: (9A/N) (DD MMM YYYY)** 26 AUG 2003

• **Agreement Expire/Term Date: (9A/N) (DD MMM YYYY)** N/A

• **Agreement Registry ID/Other #: (40A/N)** 101560

• **Additional Search Criteria: (50A/N)** CLOC SCLL

• **Location: (ISO Country Code) (2+20A/N)** US + SAN JOSE

• **Iron Mountain Box #: (9A/N)** 133510277

• **Agreement Negotiator/Legal Contact: (20A/N)** NADAN, CHRIS

Legal Operations/USA Document Separator Sheet

20 Aug 2003

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRIAL EXHIBIT 1026

CASE NO. 10-03561 WHA

DATE ENTERED _____

BY _____
DEPUTY CLERK

CONFIDENTIAL

OAGOOGL0100036648



**Software & Technology (SWAT)
Transmittal Memo**

To: Mary Ann Todd [USCA12-110]
From: Sangeeta Powaku

Date: August 26, 2003

Attached Herewith
Sun Community Source License : Danger, Inc.

Comments:

Attached is a fully executed original of the above referenced agreement for the Sun Legal files. Please note that a copy of the above referenced agreement is being distributed to the following people:

Mary Vincent
Michael Garcia
Wayne Sabatelli
Chris Nadan
Carol Titus [Java Card Contracts]
Tamarah Day [All Java]
Frederico Chab [All Java]
Esmeralda Garcia
Leo Cizek
Arlene Lajeunesse
Contracts Administration
David Hunt

If you have any questions, please contact me at X40959.

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Below is what was submitted to leo.cizek@sun.com STS_BSWBA@eng
 It was submitted by:
 Leo Cizek (leo.cizek@sun.com)
 on Monday, August 18, 2003 at 14:47:04

Contract Form Name: Source or Source and Binary

SaveAs: J2ME/CLDC/MIDP SCSL CUL, MSA & TML Agrmt

Company: Danger, Inc.

SalesRep: Leo Cizek

SalesRepEmail: leo.cizek@sun.com

Region Code: 12CA

LFI/Agreement#: see below

Contract Type: SCSL - Commercial Use Attachment

Other Contract Type: LFI No.'s -

SCSL CUL: 101560

MSA: 101559

TML Agrmt: 101564

Terms and Conditions: Under the SCSL CUL, Danger becomes both an OEM and a
 Channel Partner for
 CLDC/MIDP

P.O. Number: n/a

REQUIRED Send Royalty Letter to Customer: Yes

***** CONTRACT MANAGER/ATTORNEY COMPLETES THIS SECTION: *****

Non-standard provisions:: Contract Manager/Attorney will provide brief overview
 of non-standard provisions (if any).

SCSL:

*Has usual termination on 30 days notice of breach, except that if the breach is
 curable, and Danger is not continuing to breach and is undertaking diligent
 efforts to effect a cure, the termination will occur automatically if Danger
 fails to cure such breach within 60 days of receipt of written notice of the
 breach.

*Danger can assign the agreement upon prior written notice to Sun, except that
 it may not assign this License, including by way of merger (regardless of
 whether it's the surviving entity) or acquisition, prior to the Compliance Date
 (the date they become compatible), or to a party to whom Sun has given written
 notice of infringement of (or the need to take a license to) any intellectual
 property rights licensed under this License.

*Danger cannot put Covered Code in escrow, unless the party to whom such code
 would be released is at the time of release a Licensee of the same Technology
 ("Releasee"). In such cases, Danger may place the code with an escrow agent
 that is not a Licensee, provided that Danger contractually requires in a written
 agreement and ensures that (i) except as a Licensee, the escrow agent cannot and

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does not copy, modify, view, transfer (except to the Releasee in compliance herewith) or in any way use the Covered Code at any time, (ii) the escrow agent and the escrowed Covered Code are at all times located in the United States, and (iii) the escrow agent releases copies of the Covered Code only with 10 days prior written notice to Sun and only to a party that the Sun has confirmed in writing to the escrow agent is a Licensee of the same Technology whose License is valid and current at the time of proposed release. Sun shall not unreasonably withhold or delay such confirmation. In addition, Danger must provide prior written notice to Sun of the name and address of any escrow agent to which Covered Code is provided, along with a copy of the agreement between Danger and the escrow agent and the name of each potential Releasee. In Danger's agreement with the escrow agent, Sun shall be named as an intended third party beneficiary of the contractual requirements required above (or the escrow agent must provide to Sun such escrow agent's binding written agreement to those contractual requirements), and in the event of a breach of such requirements by the escrow agent, Danger shall indemnify Sun for all out of pocket costs and expenses, including attorneys fees, incurred in enforcing the agreement and Sun's rights. All escrow related costs and fees shall be borne by Danger.

*Field of Use: (A) CLDC-class consumer electronics products based in whole or in part on technology developed by Danger and manufactured under contract by and sold by Device Manufacturers to service providers, and in which such devices Danger's Executable copies of Compliant Covered Code (or at least the client portion of Compliant Covered Code resident on the device, to the extent permitted by Section 2.3 of Attachment E) are embedded with the Danger operating system and (B) distribution by Danger of Executable copies of Compliant Covered Code embedded in and for use in Danger's mobile communications devices (including those devices that are assembled and distributed by a contract manufacturer in Danger's name as a subcontractor).

*The parties acknowledge that the mere fact of Danger's Customer distributing a Device Manufacturer Product does not by itself constitute Commercial Use where that Device Manufacturer Product has not yet been Activated, provided that Danger has adequate records to support that such Device Manufacturer Product has not been Activated. "Activated" means that (i) the particular Device Manufacturer Product has been distributed to an end user and (A) is supported by a wireless/data service or (B) can be operated stand-alone and/or independent of this wireless/data service for productive use; or (ii) the Customer has paid Danger a per unit royalty or an incremental fee based on such Device Manufacturer Product.

*Danger may distribute royalty-free a reasonable number of Evaluation Customer Products, to Customers for use on a temporary trial basis, not to exceed sixty (60) days (the "Trial Period"), provided that each such Customer (a) uses Evaluation Customer Product strictly for internal evaluation and demonstration purposes only; (b) does not sell, reproduce, distribute, market, develop, sublicense, transfer, lend, lease, or productively use any such Evaluation Customer Product; and (c) permanently ceases all use of the Evaluation Customer Product at the end of the Trial Period. All Evaluation Customer Products shall be distributed only to Customers who have agreed to evaluation license agreements that (a) contain the substantive restrictions set forth herein, and (b) comply with all obligations of the SCSL and Attachment D. Each copy of Evaluation Customer Product shall be appropriately labeled. "Evaluation Customer Product" means Compliant Covered Code in binary code form distributed during the term of the Agreement free of charge for purposes of demonstration and evaluation only. Danger must report Evaluation Customer Products. Evaluation Customer Products do not count towards Danger's cumulative volume of units or concurrent users for purposes of calculating royalties.

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*If Danger has contractually required the Device Manufacturer to brand in accordance with the License, and Danger has no notice that the Device Manufacturer is not branding or is not going to brand, then as long as Danger take reasonable steps to enforce its agreement with such Device Manufacturer, and Danger has already paid Sun the royalty rates set forth above, Danger shall not be obligated to pay Sun an additional royalty (reflecting the difference between the above royalty provisions and the doubled royalty) even if the Device Manufacturer fails to brand those Device Manufacturer Products for which Danger have already paid the royalty to Sun.

*In the event that a new release of Compliant Covered Code contains only Minor Changes from the most recent release of Compliant Covered Code, Danger may use (and must pass) the same version of the TCK that was required to be used with such previous release. "Minor Changes" means (a) bug fixes or modifications meant only to correct errors or defects and/or (b) modifications or additions made to implement "on-screen" graphics, artwork or branding changes; provided that in the case of (a) or (b) such changes do not add new functionality, features or APIs, and do not otherwise materially alter the release of Compliant Covered Code.

*Compliant Covered Code implementation in a client device Device Manufacturer Product may perform the classfile parsing and runtime type checking functionality on the server with which the Device Manufacturer Product must be used, provided that (a) with respect to running Java applications, applets and Java content, the Device Manufacturer Product, even disconnected from the server, functions as if the Compliant Covered Code resided entirely in the Device Manufacturer Product, and (b) all Java applications, applets and content must be delivered to the client device uniquely through such server (except for an ISV writing an application for Danger's Compliant Covered Code implementation, in which case such application may be tested on a client device without going through the server if the ISV has developed that application using an SDK that contains a full Compliant Covered Code implementation). The implementation of the Technology must still meet all compatibility requirements.

*Danger agrees, by the Compliance Date: (a) to cease all use and further distribution of the Non-compliant Code, including without limitation, continuation of porting of Non-compliant Code and further commercial deployment and distribution of Non-compliant Code in product, and (b) to use and implement, within the terms of this License and Attachment D, only Compliant Covered Code. The "Compliance Date" is earlier of (i) 12 months from the Effective Date of this License or (ii) the first Commercial Use of Compliant Covered Code. Notwithstanding the foregoing, for a period of 12 months after the Compliance Date, Danger may continue to use internally Non-compliant Code and to distribute bug fixes for Non-compliant Code to support its products based in whole or in part on Your Non-compliant Code technology that were shipped prior to the Compliance Date. Such bug fixes cannot include or enable new functionality or features. In addition, in the event Danger is as of the Compliance Date contractually obligated to provide such bug fixes or support for Non-compliant Code to any telecom provider or Device Manufacturer beyond 12 months after the Compliance Date, Danger may distribute bug fixes as provided above on a case by case basis to such entity, provided that Danger provides Sun with a copy of such agreement or written confirmation from such entity of such support terms.

*Beginning 12 months from the effective date (the "Payment Date"), Danger will owe Sun royalties for any Commercial Use of Non-compliant Code, at the same rate as Compliant Covered Code. Solely with respect to products Danger distributed which are Non-compliant Code (and provided that after the effective date of this License Danger's products and services remain substantially similar to its products and services prior to the effective date), and only with respect to such products in the exact unmodified form in which Danger distributed them and

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only for the specific use that Danger authorized, Sun waives all claims for profits and damages otherwise collectible by Sun from Danger, its licensees or any end users of its products or services and any claims or actions for equitable or injunctive relief, based on infringement or misappropriation by Danger, its licensees or any end users of its products or services, that were distributed prior to the Compliance Date (but including any later distribution of bug fixes to the extent expressly permitted and provided Danger is paying Sun royalties on such Non-compliant Code), of Intellectual Property Rights embodied in or that read upon Covered Code or Technology. If the License or Attachment D is terminated by Sun for cause prior to, or if it is terminated for any reason by Danger, with or without cause, prior to its distribution in volume of Compliant Covered Code hereunder, then this waiver of claims by Sun will be null and void, and Sun may pursue any claims for profits and damages against Danger, its licensees or any end users of its products or services.

*The parties acknowledge that, except for the Shared Part delivered to Danger by Sun, Sun has not yet provided Danger under this License, and Danger assert that Danger have not accessed any Original Code, Upgraded Code or other Technology. Notwithstanding the foregoing, promptly following Danger's written request to Sun, Sun shall provide to Danger the MIDP technology and materials Danger would be entitled to access on the Technology Download Site, provided Danger first pays Sun an additional annual fee of \$10,000 each year (the first year will be prorated according to the number of months remaining until the next anniversary of the License effective date) and the royalty rates set out in Section 7 of Attachment D shall all be immediately increased by 6%.

MSA:

*Provided Sun has not terminated the MSA for Customer's uncured breach, Customer may renew this Agreement (or if Sun no longer offers this support model, Customer may enter Sun's then-current standard agreement offering similar support) for up to two (2) additional one year periods following the initial term of this Agreement, except that the price to Customer shall not exceed \$110,000 for the first additional such year and \$121,000 for the second additional such year.

*No upgrades or updates, early access builds, or any code or documentation including specs, whitepapers, etc. No ability to submit or retrieve incident reports. No access to Java technology licensee website

APPROVALS: Mandatory

Legal Sign-off: 

Legal Sign-off Date: 8/25/03

Name of Contract Mgr/Attorney: Chris Nadan

Finance Sign-off: 

Finance Sign-off Date: 08/26/03

Name of GEO Finance Mgr: Wm J. N. S. S. S. S.

Revenue Recognized this Quarter (Geo. Finance to fill in):

~~5K~~ 5K

APPROVAL(S): Optional

Engineering Sign-off: _____

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Engineering Sign-off Date: _____
 Name of Engineering Mgr: _____
 Product Mktg Sign-off: _____
 Product Mktg Sign-off Date: _____
 Name of Product Mktg Mgr: _____
 Other Manager Sign-off: _____
 Other Manager Sign-off Date: _____
 Name of Other Mgr: _____
 ***** END CONTRACT MANAGER/ATTORNEY SECTION: *****
 Licensee's First Product: Danger Hiptop
 First Product with Royalty Sched: 9/1/2004
 Licensed Software 1: CLDC TCK-only
 Part Number 1: N/A
 Version Number 1: 1.1
 Platform 1: Solaris
 Royalty Part Number 1: CLD99-TC2-AO99
 Applicable License Fee(s) 1: N/A
 Prepaid Royalities 1: N/A
 Subscription Fees 1: N/A
 Other Fee 1: \$75K
 TCK Support Part 1: CLD99-TCA-AO99
 Export Type 1: Global (w/No Encryption)
 Is software necessary for this Licensed Software? 1: No
 Number of Contact Persons 1: 1
 Support Type: hidden, hidden, hidden, hidden
 TCK Support 1: TCK Support - Basic
 Licensed Software 2: MIDP TCK-only
 Part Number 2: N/A
 Version Number 2: 2.0
 Platform 2: Solaris

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Royalty Part Number 2: MID99-TC2-A099
Other Fee 2: See First Technol
Export Type 2: Global (w/No Encyption)
Is software necessary for this Licensed Software? 2: No
Is Software PreFCS: No
Has Trademark License been executed?: Yes
Logo Packet: hidden, Java Powered, hidden, hidden
Industry Type: Consumer Electronics Manufacturer
Sold To Company: Danger, Inc.
Sold To Address 1: 124 University Ave.
Sold To City: Palo Alto
Sold To State: CA
Sold To Zip: 94301
Sold To Country: USA
Main Contact Name: John Arledge
Main Contact Address: same
Main Contact Phone: 650 283 8383
Main Contact Email: john@danger.com
Name of CEO: Hank Nothhaft
CEO Address: same
CEO Phone: 650 289 5000
Legal Contact Name: Scott Darling
Legal Contact Name Address: same
Legal Contact Name Phone: 650 289 6606
Legal Contact Name Email: sdarling@danger.com

Finance Contact Name: Cindy Lee
Finance Contact Address: same
Finance Contact Phone: 650 289 6618
Finance Contact Fax: 650 289 5001

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Finance Contact Email: cindy@danger.com

Engineering Contact Name: Dan Bornstein

Engineering Contact Address: same

Engineering Contact Phone: 650 289 5052

Engineering Contact Fax: 650 289 5001

Engineering Contact Email: danfuzz@danger.com

PR Contact Name: Susan Moseley650 289 5001

PR Contact Address: same

PR Contact Phone: 650 289 5063

PR Contact Email: susan@danger.com

Contact for Agreement Signature: Legal

Authorized Use of Licensee Name?: Yes

CC: STS_ESWBA@eng

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Agreement No. 101560

SUN COMMUNITY SOURCE LICENSE**Version 2.25****(Rev. Date Nov. 04, 2002)****RECITALS**

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Original Contributor desires to license the Technology to a large community to facilitate research, innovation and product development while maintaining compatibility of such products with the Technology as delivered by Original Contributor; and

Original Contributor desires to license certain Sun Trademarks for the purpose of branding products that are compatible with the relevant Technology delivered by Original Contributor; and

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In consideration for the mutual covenants contained herein, You and Original Contributor agree as follows:

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(i) **Covered Code.** You may not include any Source Code of Community Code in any Extensions;

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"You form a unique package name by first having (or belonging to an organization that has) an Internet domain name, such as "sun.com". You then reverse the name, component by component, to obtain, in this example, "Com.sun", and use this as a prefix for Your package names, using a convention developed within Your organization to further administer package names."

3.2 **Additional Requirements and Responsibilities.** Any additional requirements and responsibilities relating to the Technology are listed in Attachment F (Additional Requirements and Responsibilities), if applicable, and are hereby incorporated into this Section 3.

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(ii) immediately upon written notice from Original Contributor in the event of circumstances specified in Sections 7.1 and 8.4; or

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8. Miscellaneous.

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8.1 Trademark. You agree to comply with the then current Sun Trademark & Logo Usage Requirements accessible through the SCSL Webpage (and currently available at <http://www.sun.com/policies/trademarks>). Except as expressly provided in the License, You are granted no right, title or license to, or interest in, any Sun Trademarks. You agree not to (i) challenge Original Contributor's ownership or use of Sun Trademarks; (ii) attempt to register any Sun Trademarks, or any mark or logo substantially similar thereto; or (iii) incorporate any Sun Trademarks into your own trademarks, product names, service marks, company names, or domain names.

8.2 Integration. This License represents the complete agreement concerning the subject matter hereof.

8.3 Assignment. Original Contributor may assign this License, and its rights and obligations hereunder, in its sole discretion. You may assign this License to a third party upon prior written notice to Original Contributor, except that You may not assign this License, including by way of merger (regardless of whether You are the surviving entity) or acquisition, prior to the Compliance Date (as defined in Attachment F), or to a party to whom Original Contributor has given written notice of infringement of (or the need to take a license to) any intellectual property rights licensed under this License.

8.4 Severability. If any provision of this License is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. Notwithstanding the foregoing, if You are prohibited by law from fully and specifically complying with Sections 2.2 or 3, this License will immediately terminate and You must immediately discontinue any use of Covered Code, and Original Contributor will immediately refund to You the unused portion of any unexpired prepaid royalty amounts that have been paid to Original Contributor, depreciated on a straight line, three year basis.

8.5 Governing Law. This License shall be governed by the laws of the United States and the State of California, as applied to contracts entered into and to be performed in California between California residents. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

8.6 Dispute Resolution.

a) Any dispute arising out of or relating to this License shall be finally settled by arbitration as set out herein, except that either party may bring any action, in a court of competent jurisdiction (which jurisdiction shall be exclusive), with respect to any dispute relating to such party's Intellectual Property Rights or with respect to Your compliance with the TCK license. Arbitration shall be administered: (i) by the American Arbitration Association (AAA), (ii) in accordance with the rules of the United Nations Commission on International Trade Law (UNCITRAL) (the "Rules") in effect at the time of arbitration as modified herein; and (iii) the arbitrator will apply the substantive laws of California and United States. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to enforce such award.

b) All arbitration proceedings shall be conducted in English by a single arbitrator selected in accordance with the Rules, who must be fluent in English and be either a retired judge or practicing attorney having at least ten (10) years litigation experience and be reasonably familiar with the technology matters relative to the dispute. Unless otherwise agreed, arbitration venue shall be in London, Tokyo, or San Francisco, whichever is closest to defendant's principal business office. The arbitrator may award monetary damages only and nothing shall preclude either party from seeking provisional or emergency relief from a court of competent jurisdiction. The arbitrator shall have no authority to award damages in excess of those permitted in this License and any such award in excess is void. All awards will be payable in U.S. dollars and may include, for the prevailing party (i) pre-judgment award interest, (ii) reasonable attorneys' fees incurred in connection with the arbitration, and (iii) reasonable costs and expenses incurred in enforcing the award. The arbitrator will order each party to produce identified documents and respond to no more than twenty-five single question interrogatories.

8.7 Construction. Any law or regulation which provides that the language of a contract shall be construed against the drafter shall not apply to this License.

8.8 U.S. Government End Users. The Covered Code is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire Covered Code with

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only those rights set forth herein. You agree to pass this notice to Your licensees.

8.9 Press Announcements. All press announcements relative to the execution of this License must be reviewed and approved by Original Contributor and You prior to release.

8.10 International Use.

a) Export/Import laws. Covered Code is subject to U.S. export control laws and may be subject to export or import regulations in other countries. Each party agrees to comply strictly with all such laws and regulations and acknowledges their responsibility to obtain such licenses to export, re-export, or import as may be required. You agree to pass these obligations to Your licensees of Covered Code, and Original Contributor agrees to pass these obligations to its licensees of Your Shared Modifications and Error Corrections.

b) Intellectual Property Protection. Due to limited intellectual property protection and enforcement in certain countries, You agree not to redistribute the Original Code, Upgraded Code, TCK and Specifications to any country other than the list of restricted countries on the SCSL Webpage.

8.11 Language. This License is in the English language only, which language shall be controlling in all respects, and all versions of this License in any other language shall be for accommodation only and shall not be binding on the parties to this License. All communications and notices made or given pursuant to this License, and all documentation and support to be provided, unless otherwise noted, shall be in the English language.

AGREED TO AND ACCEPTED BY:

You:

Danger, Inc.

By: Henrik Rothberg
(Your Name)

Title: CHAIRMAN AND CEO

Date: 8/13/03

Original Contributor:

Sun Microsystems, Inc.

By: Neal Civjan

Title: NEAL CIVJAN
VICE PRESIDENT

Date: WW OEM SOFTWARE SALES
GLOBAL SALES OPERATIONS

8/26/03

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NEAL CIVIAN
VICE PRESIDENT
WW OEM SOFTWARE SALES
GLOBAL SALES OPERATIONS

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GLOSSARY

1. "Commercial Use" means any use (excluding Internal Deployment Use) or distribution, directly or indirectly of Compliant Covered Code by You to any third party, alone or bundled with any other software or hardware, for direct or indirect commercial or strategic gain or advantage, subject to execution of Attachment D by You and Original Contributor.
2. "Community Code" means the Original Code, Upgraded Code, Error Corrections, Shared Modifications, or any combination thereof.
3. "Community Webserver(s)" means the webserver(s) designated by Original Contributor for posting Error Corrections and Shared Modifications.
4. "Compliant Covered Code" means Covered Code that complies with the requirements of the TCK.
5. "Contributor" means each Licensee that creates or contributes to the creation of any Error Correction or Shared Modification.
6. "Covered Code" means the Original Code, Upgraded Code, Modifications, or any combination thereof.
7. "Error Correction" means any change made to Community Code which conforms to the Specification and corrects the adverse effect of a failure of Community Code to perform any function set forth in or required by the Specifications.
8. "Executable" means Covered Code that has been converted to a form other than Source Code.
9. "Extension(s)" means any additional classes or other programming code and/or interfaces developed by or for You which: (i) are designed for use with the Technology; (ii) constitute an API for a library of computing functions or services; and (iii) are disclosed to third party software developers for the purpose of developing software which invokes such additional classes or other programming code and/or interfaces. The foregoing shall not apply to software development by Your subcontractors to be exclusively used by You.
10. "Intellectual Property Rights" means worldwide statutory and common law rights associated solely with (i) patents and patent applications; (ii) works of authorship including copyrights, copyright applications, copyright registrations and "moral rights"; (iii) the protection of trade and industrial secrets and confidential information; and (iv) divisions, continuations, renewals, and re-issuances of the foregoing now existing or acquired in the future.
11. "Internal Deployment Use" means use for productive purposes of Compliant Covered Code (excluding Research Use) within Your business or organization only by Your employees and/or agents, subject to execution of Attachment C by You and Original Contributor, if required.
12. "Licensee" means any party that has entered into and has in effect an agreement with Original Contributor granting substantially similar rights as the Sun Community Source Code License Version 2.25.
13. "Modification(s)" means (i) any change to Covered Code; (ii) any new file or other representation of computer program statements that contains any portion of Covered Code; and/or (iii) any new Source Code implementing any non-trivial portion of the Specifications, provided that this subsection (iii) does not include an implementation of a portion of the Specifications not specific to the Technology or Java and in common usage (or a combination of such common usage portions of the Specifications provided such combination is not specific to the Technology or Java and in common usage), that is independently developed without the use of the Specifications or Covered Code.
14. "Original Code" means the initial Source Code for the Technology as described on the Technology Download Site.
15. "Original Contributor" means Sun Microsystems, Inc., its affiliates and its successors and assigns.
16. "Reformatted Specifications" means any revision to the Specifications which translates or reformats the Specifications (as for example in connection with Your documentation) but which does not alter, subset or superset

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the functional or operational aspects of the Specifications.

17. "Research Use" means use and distribution of Covered Code only for Your research, development, testing, educational or personal and individual use, and expressly excludes Internal Deployment Use and Commercial Use.

18. "SCSL Webpage" means the Sun Community Source license webpage located at <http://sun.com/software/communitysource>, or such other url that Sun may designate from time to time.

19. "Shared Modifications" means Modifications provided by You, at Your option, pursuant to Section 2.2, or received by You from a Contributor pursuant to Section 2.3.

20. "Source Code" means computer program statements written in any high-level, readable form suitable for modification and development.

21. "Specifications" means the specifications for the Technology and other documentation, as designated on the Technology Download Site, as may be revised by Original Contributor from time to time.

22. "Sun Trademarks" means Original Contributor's SUN, JAVA, and JINI trademarks and logos, whether now used or adopted in the future.

23. "Technology" means the technology described in Attachment B, and Upgrades.

24. "Technology Compatibility Kit" or "TCK" means the test programs, procedures and/or other requirements, designated by Original Contributor for use in verifying compliance of Covered Code with the Specifications, in conjunction with the Original Code and Upgraded Code. Original Contributor may, in its sole discretion and from time to time, revise a TCK to correct errors and/or omissions and in connection with Upgrades.

25. "Technology Download Site" means the site(s) designated by Original Contributor for access to the Original Code, Upgraded Code, TCK and Specifications.

26. "Upgrade(s)" means new versions of Technology designated exclusively by Original Contributor as an "Upgrade" and released by Original Contributor from time to time.

27. "Upgraded Code" means the Source Code for Upgrades, possibly including Modifications made by Contributors.

28. "You(r)" means Danger, Inc., 124 University Avenue, Palo Alto, CA 94301.

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**ATTACHMENT A
REQUIRED NOTICES**

**ATTACHMENT A-1
REQUIRED IN ALL CASES**

"The contents of this file, or the files included with this file, are subject to the current version of Sun Community Source License for [fill in name of applicable Technology] (the "License"); You may not use this file except in compliance with the License. You may obtain a copy of the License at [http:// sun.com/software/communitysource](http://sun.com/software/communitysource). See the License for the rights, obligations and limitations governing use of the contents of the file.

The Original and Upgraded Code is [fill in name and version of applicable Technology]. The developer of the Original and Upgraded Code is Sun Microsystems, Inc. Sun Microsystems, Inc. owns the copyrights in the portions it created. All Rights Reserved.

Contributor(s): _____[SAMPLE]_____

Associated Test Suite(s) Location: ____[SAMPLE]_____

**ATTACHMENT A-2
SAMPLE LICENSEE CERTIFICATION**

"By clicking the 'Agree' button below, You certify that You are a Licensee in good standing under the Sun Community Source License, [fill in applicable Technology and Version] ("License") and that Your access, use and distribution of code and information You may obtain at this site is subject to the License."

**ATTACHMENT A-3
REQUIRED STUDENT NOTIFICATION**

"This software and related documentation has been obtained by your educational institution subject to the Sun Community Source License, [fill in applicable Technology]. You have been provided access to the software and related documentation for use only in connection with your course work and research activities as a matriculated student of your educational institution. Any other use is expressly prohibited.

THIS SOFTWARE AND RELATED DOCUMENTATION CONTAINS PROPRIETARY MATERIAL OF SUN MICROSYSTEMS, INC, WHICH ARE PROTECTED BY VARIOUS INTELLECTUAL PROPERTY RIGHTS.

You may not use this file except in compliance with the License. You may obtain a copy of the License on the web at <http://sun.com/software/ communitysource>."

ATTACHMENT B

Java(tm) 2 Platform, Micro Edition, Connected Limited Device Configuration 1.1 and Mobile Information Device Profile 2.0 Source Technology

Description of "Technology"

Java(tm) 2 Platform, Micro Edition, Connected Limited Device Configuration 1.1 and Mobile Information Device Profile 2.0 Source Technology as described on the Technology Download Site.

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ATTACHMENT C INTERNAL DEPLOYMENT USE

This Attachment C is only effective for the Technology specified in Attachment B, upon execution of Attachment D (Commercial Use License) including the requirement to pay royalties. In the event of a conflict between the terms of this Attachment C and Attachment D, the terms of Attachment D shall govern.

1. **Internal Deployment License Grant.** Subject to Your compliance with Section 2 below, and Section 8.10 of the Research Use license; in addition to the Research Use license and the TCK license, Original Contributor grants to You a worldwide, non-exclusive license, to the extent of Original Contributor's Intellectual Property Rights covering the Original Code, Upgraded Code and Specifications, to do the following:

- a) reproduce and distribute internally, Original Code and Upgraded Code as part of Compliant Covered Code, and Specifications, for Internal Deployment Use,
- b) compile such Original Code and Upgraded Code, as part of Compliant Covered Code, and reproduce and distribute internally the same in Executable form for Internal Deployment Use, and
- c) reproduce and distribute internally, Reformatted Specifications for use in connection with Internal Deployment Use.

2. **Additional Requirements and Responsibilities.** In addition to the requirements and responsibilities described under Section 3.1 of the Research Use license, and as a condition to exercising the rights granted under Section 3 above, You agree to the following additional requirements and responsibilities:

2.1 **Compatibility.** All Covered Code must be Compliant Covered Code prior to any Internal Deployment Use or Commercial Use, whether originating with You or acquired from a third party. Successful compatibility testing must be completed in accordance with the TCK License. If You make any further Modifications to any Covered Code previously determined to be Compliant Covered Code, you must ensure that it continues to be Compliant Covered Code.

ATTACHMENT D: COMMERCIAL USE LICENSE (CLDC CHNLS) Danger, Inc.

1. **Effect.** This Attachment D is to this Sun Community Source License for Java 2 Platform, Micro Edition Connected Limited Device Configuration and Mobile Information Device Profile ("SCSL"). You have agreed to the terms of the SCSL by executing a hardcopy SCSL (attached hereto) with Original Contributor. You acknowledge that the SCSL is binding on You. This Attachment D is effective only if signed below by You and Original Contributor, and applies to Your Commercial Use of Original Code and Upgraded Code. All capitalized terms used herein shall have the same meaning set forth in the SCSL, unless otherwise stated.

2. **Term.** The SCSL (including this Commercial Use license) shall have an initial term of 3 years and shall automatically renew for additional one year terms unless either party provides notice to the other no less than 60 days prior to an anniversary date.

3. **Commercial Use License Grant.** Subject to Your compliance with Sections 4 and 7 below, Section 8.10 of the Research Use license, and the TCK license and Section 2 of Attachment F; in addition to the Research Use license, the TCK license, and the Internal Deployment Use license, Original Contributor grants to You a worldwide, non-exclusive, non-transferable license, to the extent of Original Contributor's Intellectual Property Rights covering the Original Code, Upgraded Code and Specifications, to do the following within the specified field of use in Section 7:

- a) reproduce and distribute Compliant Covered Code;
- b) compile Compliant Covered Code and reproduce and distribute the same in Executable form through multiple tiers of distribution; and

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c) reproduce and distribute Reformatted Specifications in association with Compliant Covered Code.

4. Additional Requirements and Responsibilities. In addition to the requirements and responsibilities specified in the Research Use license, the TCK license and the Internal Deployment license, and as a condition to exercising the rights granted in Section 3 above, You agree to the following additional requirements and responsibilities:

a) Distribution of Source Code. Source Code of Compliant Covered Code may be distributed only to a Customer (as defined in Section 7(a) below) who is at all times a Code Sharing Licensee, defined as: (i) a Licensee of the same Technology; or (ii) a party otherwise authorized by Original Contributor in a written license agreement to receive and share Covered Code, provided that the Customer Agreement (as defined in Section 7(l) below) with such party makes clear that Compliant Covered Code provided to such party is subject to the restrictions and obligations of such party's license agreement with Original Contributor.

(i) You must not enter into any agreements purporting to put Covered Code in escrow, unless the party to whom such code would be released is at the time of release a Licensee of the same Technology ("Releasee"). In such cases, notwithstanding Section 4a) above, You may place the code with an escrow agent that is not a Licensee, provided that You contractually require in a written agreement and ensure that (i) except as permitted in "Verification of Escrow Materials" below, the escrow agent cannot and does not copy, modify, view, transfer (except to the Releasee in compliance herewith) or in any way use the Covered Code at any time, (ii) the escrow agent and the escrowed Covered Code are at all times located in the United States, and (iii) the escrow agent releases copies of the Covered Code only with 10 days prior written notice to Original Contributor and only to a party that the Original Contributor has confirmed in writing to the escrow agent is a Licensee of the same Technology whose License is valid and current at the time of proposed release. Original Contributor shall not unreasonably withhold or delay such confirmation. In addition, You must provide prior written notice to Original Contributor of the name and address of any escrow agent to which Covered Code is provided, along with a copy of the agreement between You and the escrow agent and the name of each potential Releasee. In Your agreement with the escrow agent, Original Contributor shall be named as an intended third party beneficiary of the contractual requirements required above (or the escrow agent must provide to Original Contributor such escrow agent's binding written agreement to those contractual requirements), and in the event of a breach of such requirements by the escrow agent, You shall indemnify Original Contributor for all out of pocket costs and expenses, including attorneys fees, incurred in enforcing the agreement and Original Contributor's rights. All escrow related costs and fees shall be borne by You.

(ii) Verification of Escrow Materials. If the escrow agent is a Licensee, it may copy and view the Covered Code to perform limited verification of the Covered Code, in accordance with the escrow agreement, to determine that the Covered Code compiles and runs properly. The escrow agent may also hire a third party independent contractor to perform verification of the Covered Code, in accordance with the escrow agreement, to determine that it compiles and runs properly, if such third party is a Licensee.

b) Distribution of Executable Code. You may distribute the Executable version(s) of Compliant Covered Code under a license of Your choice, provided that (i) You are in compliance with the terms of this License, including without limitation Section 7(l), below, and (ii) You make it absolutely clear that Your license is offered by You alone, not by Original Contributor or any other Contributor.

c) Branding. Products integrating Compliant Covered Code used for Commercial Use may be branded with the Technology compliance logo under a separate trademark license required to be executed by You and Original Contributor concurrent with execution of this Attachment D.

d) Integration with Configuration. The Java 2 Platform, Micro Edition, Mobile Information Device Profile ("MIDP") and Java 2 Platform, Micro Edition, Connected Limited Device Configuration ("CLDC") implementations must be tightly integrated with, and must be configured to run in conjunction with, each other, and each must meet Original Contributor's compatibility requirements in accordance with this License.

5. Indemnity/Limitation of Liability. The provisions of Section 7.1 of the Research Use license are superseded by the following:

a) Your Indemnity Obligation. You hereby agree to defend, at Your expense, any legal proceeding brought by a third party against Original Contributor or any Licensee to the extent it is based on a claim: (i) that the use, reproduction or distribution of any of Your Error Corrections or Shared Modifications is an infringement of a third party trade secret or a copyright in a country that is a signatory to the Berne Convention; (ii) arising in connection

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with any representation, warranty, support, indemnity, liability or other license terms You may offer in connection with any Covered Code; or (iii) arising from Your Commercial Use of Covered Code, other than a claim covered by Section 5.b) below, or a patent claim based solely on Covered Code not provided by You. You will pay all damages, costs and fees awarded by a court of competent jurisdiction, or such settlement amount negotiated by You, attributable to such claim. The foregoing shall not apply to any claims of intellectual property infringement to the extent such claim is based upon the combination of code or documentation supplied by You with code, technology or documentation from other sources.

b) Original Contributor's Indemnity Obligation. Original Contributor will defend, at its expense, any legal proceeding brought by a third party against You, to the extent it is based on a claim that Your authorized Commercial Use of Original Code and Upgraded Code is an infringement of a third party trade secret or a copyright in a country that is a signatory to the Berne Convention, and will pay all damages, costs and fees awarded by a court of competent jurisdiction, or such settlement amount negotiated by Original Contributor, attributable to such claim. The foregoing shall not apply to any claims of intellectual property infringement to the extent such claim is based upon the combination of code or documentation supplied by Original Contributor with code, technology or documentation from other sources.

c) Right of Intervention. Original Contributor will have the right, but not the obligation, to defend You, at Original Contributor's expense, in connection with a claim that Your Commercial Use of Original Code and Upgraded Code is an infringement of a third party patent and will, if Original Contributor chooses to defend You, pay all damages, costs and fees awarded by a court of competent jurisdiction, or such settlement amount negotiated by Original Contributor, attributable to such claim.

d) Prerequisites. Under Sections 5.b) and c) above, You must, and under Section 5.a) above, Original Contributor or any Licensee must: (i) provide notice of the claim promptly to the party providing an indemnity; (ii) give the indemnifying party sole control of the defense and settlement of the claim; (iii) provide the indemnifying party, at indemnifying party's expense, all available information, assistance and authority to defend; and (iv) not have compromised or settled such claim or proceeding without the indemnifying party's prior written consent.

e) Additional Remedies. Should any Original Code, Upgraded Code, TCK, Specifications, or Modifications become, or in the indemnifying party's opinion be likely to become, the subject of a claim of infringement for which indemnity is provided above, the indemnifying party may, at its sole option, attempt to procure on reasonable terms the rights necessary for the indemnified party to exercise its license rights under this License with respect to the infringing items, or to modify the infringing items so that they are no longer infringing without substantially impairing their function or performance. If the indemnifying party is unable to do the foregoing after reasonable efforts, then the indemnifying party may send a notice of such inability to the indemnified party together with a refund of any license fees received by the indemnifying party from the indemnified party for the infringing items applicable to the indemnified party's future use or distribution of such infringing items, in which case the indemnifying party will not be liable for any damages resulting from infringing activity with respect to the infringing items occurring after such notice and refund.

6. Support Programs.

Support to You. Technical support is not provided to You by Original Contributor under this License. You may contract for one or more support programs from Original Contributor relating to the Technology which are described on the SCSL Webpage.

Customer Support. You are responsible for providing technical and maintenance support services to Your Customers for Your products and services.

7. Distribution Rights, Royalties and Field of Use for Technology Specified in Attachment B.

a) Definitions.

- (i) Reserved.
- (ii) "Customers" means Device Manufacturers.
- (iii) "Device Manufacturer(s)" means original equipment value-added device manufacturers.
- (iv) "Device Manufacturer Product(s)" means CLDC-class consumer electronics products based in whole or in

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part on technology developed by You and manufactured under contract by and sold by Device Manufacturers to service providers, and in which such devices Your Executable copies of Compliant Covered Code (or at least the client portion of Compliant Covered Code resident on the device, to the extent permitted by Section 2.3 of Attachment E) are embedded with the Danger operating system.

(v) "Implementation(s)" means Compliant Covered Code which includes Your own or a Channel Licensee's authorized independent software implementations (i.e., implementations developed with no access to and no use of Original Code or Upgraded Code from Original Contributor or Covered Code from any third party) of the Java Virtual Machine Specification (other than the bytecode verifier, class loader and other Shared Part) and the .io, .lang, and .util Java class specifications, for the Technology.

(vi) "Integrated Development Environment" or "IDE" means a complete, integrated, standalone development environment developed by You, in which Your Ports and/or Implementations are tightly integrated, and used for purposes of developing and testing Device Manufacturer Products and/or applications running on such Device Manufacturer Products.

(vii) "Port(s)" means Compliant Covered Code which includes Your or a Channel Licensee's authorized software port(s) of Original Contributor's reference implementations of the Technology to a real-time or embedded operating system.

b) Field of Use: in accordance herewith, distributing to Your Customers Your Ports and/or Implementations for use in Device Manufacturer Products (excluding Your distribution of silicon implementations of Ports and/or Implementations).

c) Royalty per Unit or Per Concurrent User of Device Manufacturer Products (based on product family):

| <u>Cumulative Units or Concurrent Users</u> | <u>Per Unit/Concurrent User Royalty Rate</u> |
|---|--|
| 1 to 249,999 | \$1.05 |
| 250,000 to 499,999 | \$0.76 |
| 500,000 to 999,999 | \$0.69 |
| 1,000,000 to 2,499,999 | \$0.67 |
| 2,500,000 to 4,999,999 | \$0.59 |
| 5,000,000 to 14,999,999 | \$0.52 |
| 15,000,000 to 24,999,999 | \$0.38 |
| 25,000,000 to 35,000,000 | \$0.34 |
| Over 35,000,000 | negotiated case by case |

You must pay a royalty to Original Contributor for each copy of Compliant Covered Code of which Commercial Use is made, including for each Device Manufacturer Product distributed or deployed by or for any Device Manufacturer, provided, however, that if more than one concurrent user is enabled for any unit, then the royalty shall be calculated on a per concurrent user basis for that unit. You acknowledge and agree that Modifications, Ports and Implementations, whenever created, are Covered Code and that You are authorized to distribute under this Attachment D only Ports and/or Implementations. All Ports and Implementations must be Compliant Covered Code. The parties acknowledge that the mere fact of Your Customer distributing a Device Manufacturer Product does not by itself constitute Commercial Use where that Device Manufacturer Product has not yet been Activated, provided that You have adequate records to support that such Device Manufacturer Product has not been Activated. "Activated" means that (i) the particular Device Manufacturer Product has been distributed to an end user and (A) is supported by a wireless/data service or (B) can be operated stand-alone and/or independent of this wireless/data service for productive use; or (ii) the Customer has paid You a per unit royalty or an incremental fee based on such Device Manufacturer Product.

You may distribute royalty-free a reasonable number of Evaluation Customer Products, to Customers for use on a temporary trial basis, not to exceed sixty (60) days (the "Trial Period"), provided that each such Customer (a) uses Evaluation Customer Product strictly for internal evaluation and demonstration purposes only; (b) does not sell, reproduce, distribute, market, develop, sublicense, transfer, lend, lease, or productively use any such Evaluation Customer Product; and (c) permanently ceases all use of the Evaluation Customer Product at the end of the Trial Period. All Evaluation Customer Products shall be distributed only to Customers who have agreed to evaluation license agreements that (a) contain the substantive restrictions set forth herein, and (b) comply with all obligations of the SCSL and Attachment D. Each copy of Evaluation Customer Product shall be appropriately labeled.

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"Evaluation Customer Product" means Compliant Covered Code in binary code form distributed during the term of the Agreement free of charge for purposes of demonstration and evaluation only. You must report Evaluation Customer Products under Section 7(k) below. Evaluation Customer Products do not count towards Your cumulative volume of units or concurrent users for purposes of calculating royalties.

d) Branding. If a Device Manufacturer fails for any reason to: (i) execute Original Contributor's then-standard applicable trademark license and (ii) brand its Device Manufacturer Products with the applicable Technology logo pursuant to and in accordance with the terms of said trademark license between Original Contributor and such Device Manufacturer, the royalty rates set forth in the table above are multiplied by two (2) and You shall accordingly pay double the royalty rates set forth above. Notwithstanding the foregoing, if You have contractually required the Device Manufacturer to brand in accordance with the License, and You have no notice that the Device Manufacturer is not branding or is not going to brand, then as long as You take reasonable steps to enforce Your agreement with such Device Manufacturer, and You have already paid Original Contributor the royalty rates set forth above, You shall not be obligated to pay Original Contributor an additional royalty (reflecting the difference between the above royalty provisions and the doubled royalty) even if the Device Manufacturer fails to brand those Device Manufacturer Products for which You have already paid the royalty to Original Contributor.

e) Bundled Distribution. You shall ensure that Executable copies of Ports and Implementations shall only be distributed to consumers, end users, and the mass market as embedded in Device Manufacturer Products.

f) IDE. In the event You develop an IDE, You shall ensure that Your IDE: (i) is used solely by Device Manufacturers for purposes of facilitating development of (A) applications running on Device Manufacturer Products, and/or (B) Device Manufacturer Products containing Executable copies of Your Ports and/or Implementations; and (ii) shall not be redistributed.

g) Device Manufacturer Product Requirements. You shall ensure that all Device Manufacturer Products: (i) have a principal purpose which is substantially different from that of the stand-alone Technology; (ii) represent a significant functional and value enhancement to the Technology; (iii) operate in conjunction with the Technology; and (iv) are not marketed as a technology which replaces or substitutes for the Technology.

h) TCK Requirements. You shall ensure that all Device Manufacturers will separately fulfill Original Contributor's TCK and other compatibility requirements (including fulfilling all requirements of the Specifications) before such Device Manufacturers may distribute Device Manufacturer Products; provided, however, that Your obligation shall be excused, at Original Contributor's sole discretion, only for Your Compliant Covered Code provided to the Device Manufacturer in Executable form that is running on Device Manufacturer Products, and only if: (i) such Compliant Covered Code has not in any way been modified or rendered noncompliant with the above requirements of Original Contributor, either by modifications to the Compliant Covered Code, inclusion of other functionality, or otherwise; and (ii) You (if authorized and competent to make such certification) or the Device Manufacturer certifies to Original Contributor, in a writing signed by an authorized representative of such Device Manufacturer (or You, as applicable), compliance with the obligations of Section 7(h). If the requirements of this Section 7(h) are satisfied and a Device Manufacturer is otherwise eligible for an applicable Technology logo, such Device Manufacturer may enter into Original Contributor's then-current standard trademark license directly with Original Contributor. In no event shall any Device Manufacturer use any Technology compliance logo, or distribute Device Manufacturer Products bearing any Technology compliance logo, whether on the device casing itself, on the user interface of the device, or otherwise, unless the requirements of this Section 7(h) and said trademark license are satisfied.

i) Prepayments. Subject to subsection j) below, if You receive a prepayment of (i) royalties for the license of Compliant Covered Code embedded on the Device Manufacturer Products, (ii) fees for the activation of a Device Manufacturer Product, or (iii) fees You charge for providing Your data services to an activated Device Manufacturer Product: You shall pay to Original Contributor the equivalent of such payment as due hereunder, calculated in accordance with this Section 7, within thirty (30) days following the end of the calendar quarter in which You received such payment, together with a report specifying all relevant details regarding same, including the number of units and/or the time period to which such payment applies.

j) Device Manufacturer Payments. You shall have no obligation to pay royalties to Original Contributor for distribution of Device Manufacturer Products by a Device Manufacturer that also has a license with Original Contributor for the same Technology and permitting commercial redistribution of the Technology, if said Device Manufacturer is paying royalties directly to Original Contributor, in accordance with such Device Manufacturer's license with Original Contributor, for distribution of said Device Manufacturer Products.

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k) Royalty Payments. Payment of royalties shall be made quarterly, shall be due thirty (30) days following the end of the calendar quarter to which they relate, and shall be submitted with a written statement documenting the basis for the royalty calculation. Following first distribution of Compliant Covered Code, in any quarter in which no royalties are owed, You will submit a report so indicating. You will additionally report quarterly: (a) the identities of each Device Manufacturer; and (b) the number of units distributed by each such identified Device Manufacturer and the country locations of such shipments. You shall ensure Device Manufacturers adequately report all sales of Device Manufacturer Products for which royalties owed hereunder are derived. Your royalties obligations hereunder are not contingent or dependent upon Your receipt of payment from Your Customers. Royalty reporting and payments (except for royalty prepayments, which shall be sent to the location specified on Original Contributor's invoice) shall be sent to: Sun Microsystems, Inc., Software Royalty Accounting Group, PO Box 10903, Palo Alto CA 94303.

l) Customer Agreements. Ports and Implementations shall be distributed only to Your Customers, and only pursuant to a written agreement consistent with and no less restrictive than the requirements of this License, including without limitation the requirements set forth in Section 7(e)-(k) (such agreement hereinafter referred to as "Customer Agreement"). You shall use Your best efforts to expressly name Original Contributor in Customer Agreements as an intended third party beneficiary of the obligations set forth herein. You shall use commercially reasonable efforts, comparable to efforts made by You for Your own products, to monitor and enforce adherence to Customer Agreements and shall promptly inform and consult with Original Contributor if You become aware of any substantial non-compliance or other action inconsistent with protection of Original Contributor's intellectual property rights. If a Customer fails to fulfill any of its material obligations with respect to an applicable Customer Agreement, Original Contributor may, upon its election and in addition to any other remedies that it may have, notify You in writing of such breach and require You to terminate all rights granted in such Customer Agreement by thirty (30) days written notice to such Customer, unless the breach is remedied within such thirty (30) day period. In the event that You fail to satisfy the foregoing obligations or Your Customer fails to comply with the applicable Customer Agreement after such thirty (30) days notice, Original Contributor may, upon its election and in addition to any other remedies that it may have, bring an action in its own name against said Customer directly. In those jurisdictions where Original Contributor does not have standing to bring an action in its own name, You shall assign those rights to Original Contributor as reasonably necessary to allow Original Contributor to bring an action under any legal theory available to You.

m) Taxes. All payments required by this License shall be made in United States dollars, are exclusive of taxes, and You agree to bear and be responsible for the payment of all such taxes, including, but not limited to, all sales, use, rental receipt, personal property or other taxes and their equivalents which may be levied or assessed in connection with this License (excluding only taxes based on Original Contributor's net income). To the extent You are required to withhold taxes based upon Original Contributor's income in any country, You agree to provide Original Contributor with written evidence of such withholding, suitable for Original Contributor to obtain a tax credit in the United States.

n) Records. You agree to maintain account books and records consistent with Generally Accepted Accounting Principles appropriate to Your domicile, as may be in effect from time to time, sufficient to allow the correctness of the royalties required to be paid pursuant to this License to be determined.

o) Audit Rights. Original Contributor shall have the right to audit such accounts upon reasonable prior notice using an independent auditor of Original Contributor's choice (the "Auditor"). The Auditor shall be bound to keep confidential the details of Your business affairs and to limit disclosure of the results of any audit to the sufficiency of the accounts and the amount, if any, of a payment adjustment that should be made. Such audits shall not occur more than once each year (unless discrepancies are discovered in excess of the five percent (5%) threshold set forth in Section 7(p)) below, in which case two consecutive quarters per year may be audited). Except as set forth in Section 7(p) below, Original Contributor shall bear all costs and expenses associated with the exercise of its rights to audit.

p) Payment Errors. In the event that any errors in payments shall be determined, such errors shall be corrected by appropriate adjustment in payment for the quarterly period during which the error is discovered. In the event of an underpayment of more than five percent (5%) of the proper amount owed, upon such underpayment being properly determined by the Auditor, You agree to reimburse Original Contributor the amount of the underpayment and all reasonable costs and expenses associated with the exercise of its rights to audit, and interest on the overdue amount at the maximum allowable interest rate from the date of accrual of such obligation.

*Section 7 of this Attachment D from the beginning through and including 7(l) is hereby replaced by the following where Your Commercial Use falls within the field of use below:

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7. Royalties and Payments.

Field of Use: distribution by You of Executable copies of Compliant Covered Code embedded in and for use in Your mobile communications devices (including those devices that are assembled and distributed by a contract manufacturer in Your name as a subcontractor).

Royalty per Unit or Per Concurrent User
(based on product family):

| <u>Cumulative Units or Concurrent Users</u> | <u>Per Unit/Concurrent User Royalty Rate</u> |
|---|--|
| 1 to 249,999 | \$1.05 |
| 250,000 to 499,999 | \$0.76 |
| 500,000 to 999,999 | \$0.69 |
| 1,000,000 to 2,499,999 | \$0.67 |
| 2,500,000 to 4,999,999 | \$0.59 |
| 5,000,000 to 14,999,999 | \$0.52 |
| 15,000,000 to 24,999,999 | \$0.38 |
| 25,000,000 to 35,000,000 | \$0.34 |
| Over 35,000,000 | negotiated case by case |

You must pay a royalty to Original Contributor as provided above for each copy of Covered Code of which Commercial Use is made; provided, however, that if more than one concurrent user is enabled for any unit, then the royalty shall be calculated on a per concurrent user basis for that unit. If, pursuant to Section 4.c) above, You decline to brand or at any time cease to brand the hardware end device in which the Technology is incorporated, the royalty rates set forth above are multiplied by two (2) and You shall accordingly pay double the royalty rates set forth above. You acknowledge and agree that Modifications, whenever created, are Covered Code and that You are authorized to distribute under this Attachment D only Compliant Covered Code. The parties acknowledge that the mere fact of Your distributing a mobile communications device within the field of use above does not by itself constitute Commercial Use where such device has not yet been Activated, provided that You have adequate records to support that such device has not been Activated. "Activated" means that (i) the particular device has been distributed to an end user and (A) is supported by a wireless/data service or (B) can be operated stand-alone and/or independent of this wireless/data service for productive use; or (ii) You have been paid a per unit royalty or incremental fee based on such device.

You may distribute (or have distributed, as permitted above) royalty-free a reasonable number of Evaluation Customer Products, to third parties in accordance with this paragraph and SCSL. All Evaluation Customer Products shall be distributed only to third parties who have agreed to license agreements that (a) prohibit such party from (1) using the Compliant Covered Code except as embedded in the mobile communications device in which the Compliant Covered Code was distributed; (2) reproducing, distributing, sublicensing, or otherwise transferring the Covered Code; or (3) modifying, reverse-engineering, decompiling, or otherwise attempting to derive the Source Code form of the Covered Code; and (b) comply with all obligations of the SCSL and Attachment D. "Evaluation Customer Product" means Compliant Covered Code in binary code form embedded in and for use in Your mobile communications devices distributed during the term of the Agreement free of charge for purposes of demonstration, testing and evaluation only. You must report Evaluation Customer Products under the paragraph Royalty Payments below. Evaluation Customer Products do not count towards Your cumulative volume of units or concurrent users for purposes of calculating royalties.

Royalty Payments. Payment of royalties shall be made quarterly, shall be due thirty (30) days following the end of the calendar quarter to which they relate and shall be submitted with a written statement documenting the basis for the royalty calculation. Following first distribution of Compliant Covered Code, in any quarter in which no royalties are owed, You will submit a report so indicating. You will additionally report quarterly the number of units distributed, including the industry or market segment of the end users. Royalty reporting and payments (except for royalty prepayments, which shall be sent to the location specified on Original Contributor's invoice) shall be sent to: Sun Microsystems, Inc., Software Royalty Accounting Group, PO Box 10903, Palo Alto CA 94303.

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8. Notice of Breach or Infringement. Each party shall notify the other immediately in writing when it becomes aware of any breach or violation of the terms of this License, or when You become aware of any potential or actual infringement by a third party of the Technology or Original Contributor's Intellectual Property Rights therein.

9. Proprietary Rights Notices. You may not remove any copyright notices, trademark notices or other proprietary legends of Original Contributor or its suppliers contained on or in the Original Code, Upgraded Code and Specifications.

10. Notices. All written notices required by this License must be delivered in person or by means evidenced by a delivery receipt and will be effective upon receipt by the persons at the addresses specified below.

Original Contributor:

You:

Sun Microsystems, Inc.
4150 Network Circle,
Santa Clara, California, USA 95054
Attn.: VP, Software Sales
cc: Legal (Software Sales)

Danger, Inc.
124 University Avenue
Palo Alto, CA 94301
Attn.: GENERAL COUNSEL

11. Disclaimer of Agency. The relationship created hereby is that of licensor and licensee and the parties hereby acknowledge and agree that nothing herein shall be deemed to constitute You as a franchisee of Original Contributor. You hereby waive the benefit of any state or federal statutes dealing with the establishment and regulation of franchises.

12. Confidentiality. The parties shall keep and maintain in confidence the terms and conditions of this Attachment D except to the extent disclosure is required by law.

13. No Third Party Beneficiaries. Nothing herein creates third party beneficiary rights of any kind in favor of any party other than Original Contributor.

AGREED TO AND ACCEPTED BY:

You:

Original Contributor:

Danger, Inc.**Sun Microsystems, Inc.**By: Henry R. NottbartBy: Neal CivjanName: HENRY R. NOTTBARTName: NEAL CIVJANTitle: CHAIRMAN AND CEOTitle: VICE PRESIDENTDate: 8/13/03Date: WW OEM SOFTWARE SALES
GLOBAL SALES OPERATIONS
8/26/03

ATTACHMENT E TECHNOLOGY COMPATIBILITY KIT

The following license is effective for the Java(tm) 2 Platform, Micro Edition Connected Limited Device Configuration Technology Compatibility Kit and the Java(tm) 2 Platform, Micro Edition Mobile Information Device Profile Technology Compatibility Kit, but only upon execution of a separate support agreement between You and Original Contributor (subject to an annual fee) as described on the SCSL Webpage. The Technology Compatibility Kit for the Technology specified in Attachment B may be accessed at the Technology Download Site only upon execution of the support agreement.

1. TCK License.

a) Subject to the restrictions set forth in Section 1.b below and Section 8.10 of the Research Use license, in

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addition to the Research Use license, Original Contributor grants to You a worldwide, non-exclusive, non-transferable license, to the extent of Original Contributor's Intellectual Property Rights in the TCK (without the right to sublicense), to use the TCK to develop and test Covered Code.

b) TCK Use Restrictions. You are not authorized to create derivative works of the TCK or use the TCK to test any implementation of the Specification that is not Covered Code. You may not publish your test results or make claims of comparative compatibility with respect to other implementations of the Specification. In consideration for the license grant in Section 1.a above you agree not to develop your own tests which are intended to validate conformance with the Specification.

2. Requirements for Determining Compliance.

2.1 Definitions.

a) "Added Value" means code which:

- (i) has a principal purpose which is substantially different from that of the stand-alone Technology;
- (ii) represents a significant functional and value enhancement to the Technology;
- (iii) operates in conjunction with the Technology; and
- (iv) is not marketed as a technology which replaces or substitutes for the Technology.

b) "Java Classes" means the specific class libraries associated with each Technology defined in Attachment B.

c) "Java Runtime Interpreter" means the program(s) which implement the Java virtual machine for the Technology as defined in the Specification.

d) "Platform Dependent Part" means those Original Code and Upgraded Code files of the Technology which are not in a "share" directory or subdirectory thereof.

e) "Shared Part" means those Original Code and Upgraded Code files of the Technology which are identified as "shared" (or words of similar meaning) or which are in any "share" directory or subdirectory thereof, except those files specifically designated by Original Contributor as modifiable.

f) "User's Guide" means the users guide for the TCK which Sun makes available to You to provide direction in how to run the TCK and properly interpret the results, as may be revised by Sun from time to time.

2.2 Development Restrictions. Compliant Covered Code:

- a) must include Added Value;
- b) must fully comply with the Specifications for the Technology specified in Attachment B;
- c) must include the Shared Part, complete and unmodified;
- d) may not modify the functional behavior of the Java Runtime Interpreter or the Java Classes;
- e) may not modify, subset or superset the interfaces of the Java Runtime Interpreter or the Java Classes;
- f) may not subset or superset the Java Classes;
- g) may not modify or extend the required public class or public interface declarations whose names begin with "java", "javax", "jini", "net.jini", "sun.hotjava", "COM.sun" or their equivalents in any subsequent naming convention; and
- h) may not include an implementation of any part of a Profile or use any of the APIs within a Profile, unless

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You implement the Profile in its entirety in conformance with the applicable compatibility requirements and test suites as developed and licensed by Original Contributor or other authorized party. "Profile" means the Mobile Information Device Profile or such other profile as may be developed under or in connection with the Java Community Process or as otherwise authorized by Original Contributor. Notwithstanding the foregoing, nothing herein shall be construed as eliminating or modifying Your obligation to include Added Value as set forth in Section 2.2(a), above.

2.3 Compatibility Testing. Successful compatibility testing must be completed by You, or at Original Contributor's option, a third party designated by Original Contributor, to conduct such tests, in accordance with the User's Guide, and using the most current version of the CLDC and MIDP TCKs that were available from Original Contributor one year prior to: (i) Your Internal Deployment Use; and (ii) each release of Compliant Covered Code by You for Commercial Use. In the event that a new release of Compliant Covered Code contains only Minor Changes from the most recent release of Compliant Covered Code, You may use (and must pass) the same version of the TCK that was required to be used with such previous release. "Minor Changes" means (a) bug fixes or modifications meant only to correct errors or defects and/or (b) modifications or additions made to implement "on-screen" graphics, artwork or branding changes; provided that in the case of (a) or (b) such changes do not add new functionality, features or APIs, and do not otherwise materially alter the release of Compliant Covered Code. In the event that You elect to use a version of Upgraded Code that is newer than that which is required under this Section 2.3, then You agree to pass the version of the TCK that corresponds to such newer version of Upgraded Code.

Notwithstanding the foregoing, when Original Contributor releases a TCK Update to the TCK you were otherwise obligated to use under this Section 2.3, You must pass the most current version of such TCK Update that was available from Original Contributor one hundred twenty (120) days prior to (i) Your Internal Deployment Use; and (ii) each release of Compliant Covered Code by You for Commercial Use. For purposes of this section, "TCK Update" means a release of an updated TCK that does not coincide with the release of a new version of the applicable Specification for the Technology, but rather tests for compatibility with the same version of the Specification as does the TCK it is updating.

The parties acknowledge that if there is a change only in the standalone applications distributed with an unchanged copy of Compliant Covered Code, this does not by itself constitute a new release of Compliant Covered Code. Further, if Original Contributor changes its standard Sun Community Source License terms and conditions concerning the particular version of the TCK that must be passed, You may elect to enter a written amendment from Original Contributor adopting those new standard terms and conditions in their entirety. In addition, Your Compliant Covered Code implementation in a client device Device Manufacturer Product may perform the classfile parsing and runtime type checking functionality on the server with which the Device Manufacturer Product must be used, provided that (a) with respect to running Java applications, applets and Java content, the Device Manufacturer Product, even disconnected from the server, functions as if the Compliant Covered Code resided entirely in the Device Manufacturer Product, and (b) all Java applications, applets and content must be delivered to the client device uniquely through such server (except for an ISV writing an application for Your Compliant Covered Code implementation, in which case such application may be tested on a client device without going through the server if the ISV has developed that application using an SDK that contains a full Compliant Covered Code implementation). Notwithstanding any of the foregoing, the implementation of the Technology must still meet all compatibility requirements (including without limitation the requirements in the User's Guide), and You understand and agree that Original Contributor is not approving this architecture and nothing herein obligates Original Contributor to provide You additional support, or to modify the Technology or TCK to enable Your architecture.

2.4 Test Results. You agree to provide to Original Contributor or the third party test facility if applicable, Your test results that demonstrate that Covered Code is Compliant Covered Code and that Original Contributor may

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publish or otherwise distribute such test results.

ATTACHMENT F: ADDITIONAL REQUIREMENTS AND RESPONSIBILITIES**Danger, Inc.**

1. **Migration to Compliant Covered Code.** You acknowledge and agree that (i) any of Your software code which implements in whole or in part any Java Technology specifications has not been authorized by Original Contributor ("Non-compliant Code"), (ii) Non-compliant Code is not Compliant Covered Code, (iii) there is no authorization granted to You from Original Contributor under Sections 3 or 7 of Attachment D to use or distribute such code, and (iv) Non-compliant Code is not eligible under Section 4(c) of Attachment D to be branded or identified in any manner as, or related to, Java technology, and You shall not brand or identify Non-compliant Code in any manner as, or related to, Java technology.
2. **Compliance.** You agree, by the Compliance Date: (a) to cease all use and further distribution of the Non-compliant Code, including without limitation, continuation of porting of Non-compliant Code and further commercial deployment and distribution of Non-compliant Code in product, and (b) to use and implement, within the terms of this License and Attachment D, only Compliant Covered Code. The "Compliance Date" is earlier of (i) 12 months from the Effective Date of this License or (ii) the first Commercial Use of Compliant Covered Code. Notwithstanding the foregoing, for a period of 12 months after the Compliance Date, You may continue to use internally Non-compliant Code and to distribute bug fixes for Non-compliant Code to support Your products based in whole or in part on Your Non-compliant Code technology that were shipped prior to the Compliance Date. Such bug fixes cannot include or enable new functionality or features. In addition, in the event You are as of the Compliance Date contractually obligated to provide such bug fixes or support for Non-compliant Code to any telecom provider or Device Manufacturer beyond 12 months after the Compliance Date, You may distribute bug fixes as provided above on a case by case basis to such entity, provided that You provide Original Contributor with a copy of such agreement or written confirmation from such entity of such support terms.
3. **Payment/Waiver.** Beginning 12 months from the effective date of this License (the "Payment Date"), You will owe Original Contributor royalties for any Commercial Use of Non-compliant Code under Section 7(c) of Attachment D, at the same rate as Compliant Covered Code. Solely with respect to the use, distribution, creation, sale or licensing of products You distributed or had distributed which are Non-compliant Code (and provided that after the effective date of this License Your products and services remain substantially similar to Your products and services prior to the effective date), and only with respect to such products in the exact unmodified form in which You distributed them and only for the specific use that You authorized, Original Contributor agrees to and hereby waives all claims for profits and damages otherwise collectible by Original Contributor from You, Your licensees or any end users of Your products or services and any claims or actions for equitable or injunctive relief, based on infringement or misappropriation by You, Your licensees or any end users of Your products or services, that were distributed prior to the Compliance Date (but including any later distribution of bug fixes to the extent expressly permitted in Section 2 above and provided You are paying Original Contributor royalties on such Non-compliant Code as required under Section 2 above), of Intellectual Property Rights embodied in or that read upon Covered Code or Technology. If the License or Attachment D is terminated by Original Contributor for cause prior to, or if it is terminated for any reason by You, with or without cause, prior to Your distribution in volume of Compliant Covered Code hereunder, then this waiver of claims by Original Contributor will be null and void, and Original Contributor may pursue any claims for profits and damages against You, Your licensees or any end users of Your products or services. The foregoing is not intended by You as an acknowledgement that any such infringement or misappropriation has occurred.
4. **No Original Code.** The parties acknowledge that, except for the Shared Part delivered to You by Original

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Contributor, Original Contributor has not provided You under this License, and You assert that You have not accessed any Original Code, Upgraded Code or other Technology. Notwithstanding the foregoing, promptly following Your written request to Original Contributor, Original Contributor shall provide to You the MIDP technology and materials You would be entitled to access on the Technology Download Site, provided You first pay to Original Contributor an additional annual fee of \$10,000 each year (the first year will be prorated according to the number of months remaining until the next anniversary of the License effective date) and the royalty rates set out in Section 7 of Attachment D shall all be immediately increased by 6%.

5. Miscellaneous. This Attachment F shall govern and supercede any different or conflicting terms in the License or associated Attachments.

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